

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Serge E. Bayard,
Plaintiff

v.


Case No. 11-cv-598-SM

Merrimack County
Department of Corrections,
Defendant

O R D E R

Re: (Document No. 20)
Plaintiff's Motion For Voluntary Dismissal

Ruling: Denied. Plaintiff's proffered reasons for seeking voluntary dismissal without prejudice - to avoid delay in appealing orders dismissing some claims in this case, while preserving the opportunity to refile the remaining claim after pursuing an appeal - are inadequate, and would substantially prejudice the defendant by requiring the defendant to incur redundant and unnecessary attorney's fees in the likely event the dismissed claim is later refiled, suffer additional delay in resolving this dispute on the merits, and likely be required to participate in multiple, appeals. In addition, such a course would not result in an efficient use of judicial resources. See generally JRA Architects & Project Managers, P.S.C. v. First Financial Group, Inc., 375 Fed. Appx. 42, 2010 WL 2011537 (1st Cir. 2010). Plaintiff is, however, entitled to an opportunity to refile his motion, seeking dismissal of the remaining claim with prejudice. See De Fontanez v. Jefferson Pilot Life Ins. Co., 36 F.3d 1089 (1st Cir. 1994). And, while conditions might be fashioned that would support dismissal without prejudice (e.g., payment by plaintiff of defendant's attorney's fees incurred in defending against the remaining claim to date), plaintiff has not suggested that he is capable of meeting any such protective conditions. He may, of course, do so in a refiled motion.


Steven J. McAuliffe
United States District Judge

Date: October 23, 2012

cc: Serge E. Bayard, pro se
Corey M. Belobrow, Esq.